2017 IL App (1st) 141905-U

FIRST DIVISION
March 13, 2017

No. 14-1905

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RAYNELL WOLFE, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 11 CR 11384 Honorable Matthew E. Coghlan Judge Presiding

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JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: There was sufficient evidence for the jury to find defendant guilty of aggravated battery with a firearm. Defendant is not entitled to relief for ineffective assistance of counsel based on counsel's failure to request a jury instruction on a lesser offense. The automatic transfer and exclusive jurisdiction provisions of the Juvenile Court Act are not facially unconstitutional. Defendant is not entitled to a new sentencing hearing based on an amendment made to the Illinois Criminal Code after he was sentenced. The 14-year sentence imposed by the trial judge was not an abuse of discretion. The fines and fees assessed against defendant are modified.

¶ 2 Defendant Raynell Wolfe was convicted of aggravated battery with a firearm by a jury and sentenced to 14 years in prison. The conviction stemmed from a drive-by shooting that resulted in

an individual being shot in the leg. Defendant argues on appeal that the State failed to prove him guilty beyond a reasonable doubt because the evidence showed there were multiple shooters, yet did not show that defendant was the one who fired the shot that struck the victim. Defendant also argues that his trial counsel was ineffective, that the imposition of an adult prosecution and sentence are unconstitutional, and that his sentence is excessive. We affirm.

¶ 3 BACKGROUND

¶ 4 Lavelle Cox was walking along the sidewalk with his friend, Maurice Terrell, when they heard gunshots and ran into a vacant lot nearby. Cox soon realized that he had been shot in the leg. Within about a minute of the shooting, the police observed a blue Oldsmobile Alero fail to stop at a stop sign. The police executed a traffic stop. As the officers exited their vehicle and began to approach the Alero on foot, the car drove away. Another squad car was able to stop the vehicle just a quarter of a block away. The vehicle was being driven by defendant. The co-defendant, Martell Howard, was the passenger. Upon approaching the subject vehicle, the police officers observed spent shell casings in the backseat and part of a firearm protruding from under the passenger seat.

¶ 5 In exchange for leniency, co-defendant Howard testified in the State's case. He pled guilty to aggravated battery with a dangerous weapon and received a five-year sentence. Howard testified that both he and defendant are members of the Mind on Business street gang, a division of the Gangster Disciples. Howard stated that the day of the shooting, he called defendant to come pick him up. As they were traveling to their destination, they drove through a rival gang's territory. Defendant apparently spotted people on the block and said to Howard, "These niggas lacking," which Howard understood to mean that the people were not paying attention. Howard testified that defendant then retrieved a gun from the back of the passenger seat and fired several shots from the

driver's side of the vehicle at the people on the sidewalk.

¶ 6 Howard testified that after defendant shot at the people on the block, people started returning fire back at them from the side of the street that defendant fired towards. Defendant drove off, but Howard stated that a squad car was behind them in less than a minute. Howard testified that defendant tried to drive away, but that another police car appeared in front of them and they were stopped. Howard said that as he was being taken into custody he saw the shell casings in the backseat and saw the officers recover the firearm.

¶ 7 During the investigation, the police observed a bullet hole in the Alero's driver side door. There was also bullet damage to an unrelated vehicle that was parked on the west side of the street. The police were able to recover surveillance video from a building on the west side of the street that shows two unknown individuals, not in a car, in possession of firearms. An evidence technician gathered and documented the firearm and ammunition evidence. Bullet casings were found in the back of the Alero, in the street, and on the sidewalk and parkway.

¶ 8 The State offered expert testimony from a ballistics expert. The expert testified that the two nine millimeter Luger-fired cartridges recovered from the street and one of the bullets recovered from the parked vehicle matched the cartridges found in the backseat of the Alero and were fired from the weapon recovered therein. The second bullet recovered from the parked vehicle was not suitable for comparison testing. The expert testified that the cartridges that were recovered from the sidewalk and the parkway were fired from different weapons, not the one found in the car defendant was driving. The expert testified that there were at least three weapons fired with a maximum of four.

¶ 9 Defendant's primary position at trial was that his co-defendant, Howard, was the shooter.

Defendant also argued that, in light of the fact that there were at least three shooters, there was no evidence to demonstrate that he was the one that shot Cox. The jury found defendant guilty of aggravated battery with a firearm. He had also been charged with, but was found not guilty of, attempted murder.

¶ 10 At his sentencing, defendant submitted a report that indicated that he grew up in a troubled neighborhood. He was raised by a single mother who had financial difficulties. He did associate with gang members, but while he was incarcerated waiting for trial he realized that he no longer wanted to be associated with those people. Defendant also has a son with whom he was very close and had been supporting financially. Eight people submitted letters speaking to his good character. Defendant did not have any prior convictions to consider for purposes of sentencing. Defendant urged the court to consider his age, that he has a child, his supportive family, and the lack of violence in his history.

¶ 11 On the other side, the State argued that a substantial sentence was necessary because defendant's crime was committed on a public way and threatened serious bodily harm to innocent passersby. The State maintained that a strong sentence was necessary to deter others from committing this type of offense.

¶ 12 The trial court sentenced defendant to 14 years in prison.

¶ 13 On appeal, defendant argues that there was insufficient evidence to prove beyond a reasonable doubt that he was the one that shot Cox. In a similar vein, defendant argues that his trial counsel was ineffective for failing to request a jury instruction on the offense of aggravated discharge of a firearm. Defendant maintains that since the State did not prove that he was the one that shot Cox, the evidence only supported a conviction for aggravated discharge of a firearm and

he was prejudiced by the jury being unable to consider that option. Defendant also argues that being tried and sentenced as an adult violated his constitutional rights and that his sentence is excessive. And defendant argues, and the State in part concedes, that certain fines and fees were improperly assessed against him.

¶ 14 ANALYSIS

¶ 15 I. Defendant's Conviction

¶ 16 Defendant argues that we should reduce his conviction from aggravated battery with a firearm to aggravated discharge of a firearm because there was no evidence that he fired the bullet that struck Cox. To sustain a conviction for the offense of aggravated battery with a firearm, the State must prove that, in committing a battery, the defendant knowingly or intentionally caused an injury to another person by means of discharging of a firearm. *People v. Cherry*, 2016 IL 118728, ¶ 20. By contrast, a conviction for aggravated discharge of a firearm can be sustained when the State proves that the defendant knowingly or intentionally discharged a firearm in the direction of another person. *People v. Daheya*, 2013 IL App (1st) 122333, ¶ 64.

¶ 17 The State must prove each element of an offense beyond a reasonable doubt. *People v. Sams*, 2013 IL App (1st) 121431, ¶ 9. The standard of review on a challenge of the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross,* 229 Ill. 2d 255, 272 (2008). It is not the reviewing court's function to retry the defendant. *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 40. The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts and inconsistencies in the evidence. *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 21.

¶ 18 What we are presented with here is a classic question that is to be left for the jury. There was evidence that the victim was walking on the west side of Prairie Avenue. Defendant was driving north on Prairie Avenue when he saw what he believed might be rival gang members. He retrieved a gun from the backseat and fired from the driver side of his vehicle toward the west side of Prairie Avenue when the victim was struck by a bullet as he was running away. Gunfire was returned from the same side of the street that the victim was on and towards the defendant. There is surveillance tape that shows people in front of 6030-32 South Prairie (located on the west side of the street) firing away from that building to the east and northeast. There was an uninvolved car parked in front of 6030-32 South Prairie facing south and the bullet recovered from its driver side door was fired from defendant's gun. All of the cartridge casings found in the street and in the backseat of the vehicle defendant was driving came from bullets fired from defendant's gun; while all of the cartridge casings found on the sidewalk were from other, unrecovered weapons.

¶ 19 From that evidence, the jury was entitled to conclude that the unidentified shooters were firing towards the east, while defendant was the only one firing towards the west—*i.e.* towards the sidewalk on the west side of the street where the victim was shot. That conclusion is fully supported by the codefendant's testimony and not contradicted or called into question by any contrary evidence.

¶ 20 To support his argument that a conviction on a lesser charge is warranted, defendant points out that the evidence showed that at least three guns were fired. No physical evidence linked the gun or the casings found in the car that defendant was driving with the bullet that struck the victim. Defendant adds that no evidence was offered at all about the bullet that struck the victim, and that not all of the gunshots were accounted for. But none of those points need to be proved for a

defendant to be found guilty beyond a reasonable doubt of aggravated battery with a firearm.

¶ 21 The principal analog defendant offers as authority to support his position that a lesser conviction is warranted is *People v. Lavelle*, 396 Ill. App. 3d 372 (2009). In *Lavelle*, both the defendant and codefendant fired at the victim. *Id*. at 377. The bullet that was recovered from the victim could not be traced reliably to a specific weapon. *Id*. at 384. Thus, on appeal, we reduced the defendant's enhancement holding him responsible for personally discharging a firearm rather than personally discharging a firearm that proximately caused death. *Id*. at 385.

¶ 22 But there is more here. There was evidence that defendant was the only person firing shots in a westbound direction. It is completely plausible, based on the evidence presented, that a shootout broke out with defendant firing west and the other unidentified shooters firing away from that direction. Thus, it is a logical conclusion that defendant's bullet was the only one that could have possibly struck the victim. That is precisely the question the jury was called upon to decide. It is not our role to reweigh the evidence or retry the defendant. *Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 40. Here, when the evidence is viewed in a light most favorable to the prosecution, a rational trier of fact can surely find the essential elements of aggravated battery with a firearm beyond reasonable doubt.

¶ 23 Defendant argues that his trial counsel was ineffective for failing to request jury instructions on aggravated discharge of a firearm and insists that there is a reasonable probability that the outcome would have been different if the instruction was given. To be entitled to relief for ineffective assistance of counsel, a defendant must show that his counsel's representation fell below an objective standard of reasonableness and that he suffered prejudice as a result. *People v. Scott*, 2015 IL App (1st) 131503, ¶ 27. The failure to satisfy both prongs precludes a finding of

ineffective assistance. *People v. Patterson,* 192 Ill. 2d 93, 107 (2000). To satisfy the prejudice prong of an ineffective assistance of counsel claim, the defendant must show that, but for counsel's deficient performance, a reasonable probability exists that the result of the proceeding would have been different. *People v. Hensley*, 2014 IL App (1st) 120802, ¶ 45.

¶ 24 We analyze questions of ineffective assistance by considering the entire record. *People v. Hommerson*, 399 Ill. App. 3d 405, 415 (2010). A defendant is entitled to competent, not perfect, representation and mistakes in trial strategy or judgment do not necessarily result in ineffective assistance. *People v. Calhoun,* 404 Ill. App. 3d 362, 383 (2010). An evaluation of defense counsel's conduct does not extend to areas involving the exercise of professional judgment, discretion, or trial tactics. *People v. Franklin*, 135 Ill. 2d 78, 118 (1990).

¶ 25 Defendant's ineffective assistance claim fails for multiple reasons. Defendant has not given any reason that it is "reasonably probable" that the jury would have found him guilty of aggravated discharge of a firearm rather than aggravated battery with a firearm had the instruction been given. Possible, maybe, but in no way probable. Defendant's abbreviated argument on appeal regarding the existence of prejudice is telling. As set forth above, there was uncontradicted evidence to support the jury's verdict. Defendant cannot establish prejudice, which is his burden. *People v. Ward*, 371 Ill. App. 3d 382, 436 (2007) (a defendant cannot carry his burden of proving prejudice under *Strickland* merely by speculating).

¶ 26 In addition, defense counsel's primary strategy at trial was to try to implicate the codefendant-cooperating witness as the shooter and convey to the jury that his testimony was given for the purpose of leniency, not truth. It is possible that trial counsel thought it would be unwise to request an instruction that might influence the jury to assume that defendant was the

shooter. If the trial strategy was to have the jury find defendant not guilty on any charges, then advocating for an instruction that defendant was in fact the shooter would have been countervailing. Trial counsel may well have believed that she could convince the jury that defendant was not the shooter. It was a reasonable position to take. There was evidence that the firearm was found under the passenger seat—where the codefendant was sitting. The victim and his companion did not see who the shooter was. Defendant had no gunshot residue on his hands, while the co-defendant had trace components. And the codefendant received a far shorter sentence than he risked if he went to trial. All things considered, we cannot say that counsel's representation affirmatively fell below an objective standard of reasonableness.

¶ 27 The jury concluded that there was evidence beyond a reasonable doubt that defendant discharged the weapon and in doing so proximately caused the victim's injury. There is no reason to think that the jury only found such proof beyond a reasonable doubt because it wanted to punish defendant for discharging a weapon, even while not believing defendant fired the bullet that struck the victim. We presume the jury followed the jury instructions in reaching its verdict. *People v. Diehl*, 335 Ill. App. 3d 693, 703 (2002). Causing injury was an element of the offense that the jury was instructed to address and it found proximate cause beyond a reasonable doubt. Based on the entire record, defendant has not satisfied either prong required for relief for ineffective assistance of counsel.

¶ 28 II. Defendant's Sentence

¶ 29 Defendant argues that the statutes resulting in his trial and conviction as an adult, despite his age of 17 at the time of the offense, are unconstitutional. The statutes at issue are the automatic transfer provision (705 ILCS 405/5-130 (West 2012)) and the exclusive jurisdiction provision

(705 ILCS 405/5-120 (West 2012)). Like many defendants over the past few years, defendant challenges the constitutionality of these statutes based on a line of United States Supreme Court cases: *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v. North Carolina*, --- U.S. ---, 131 S. Ct. 2394 (2011); and *Miller v. Alabama*, --- U.S. ---, 132 S. Ct. 2455 (2012). The cases essentially provide that minors cannot be sentenced to the death penalty and cannot be mandatorily sentenced to life in prison without the possibility of parole. Distilling from that line of cases, defendant argues that the statutory trial and sentencing scheme he was given violates: (1) the eighth amendment; (2) the proportionate penalties clause; (3) his right to procedural due process; and (4) his right to substantive due process.

¶ 30 Defendant's challenges are facial ones—that the statutes are unconstitutional for any 17 year old charged with a felony or any 15 year old charged with particular offenses, such as aggravated battery with a firearm. To deem a statute facially unconstitutional, we must find that there are no circumstances in which the statute could be validly applied. *People v. Davis*, 2014 IL 115595, ¶ 25. All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate a clear constitutional violation. *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005). A court must construe a statute so as to affirm its constitutionality if reasonably possible. *Id.*

¶ 31 Defendant essentially concedes that the case of *People v. Patterson*, 2014 IL 115102 defeats his Eighth Amendment and proportionate penalties clause claims, but he argues that *Patterson* was wrongly decided. Of course, we are bound by that holding. *People v. Muhammad*, 398 Ill. App. 3d 1013, 1017 (2010); *People v. Malloy*, 374 Ill. App. 3d 820, 822 (2007). Moreover, as *Patterson* and many other cases demonstrate, there are situations in which those statutes can be

constitutionally applied, so they are not facially unconstitutional. Accordingly, we decline to part from *Patterson* on those questions.

¶ 32 As for his due process claims, defendant argues that substantive due process rights are violated when defendants are treated as adults without first showing that such treatment is appropriate. Defendant contends that juveniles have a liberty interest in being treated as minors or, alternatively, that the statutes are not rationally related to any legitimate government interest. As we have explained in the past, juveniles do not have a constitutional right to be tried as juveniles—the right was created by statute. *People v. Perea*, 347 Ill. App. 3d 26, 36 (2004). Moreover, as the Illinois Supreme Court has explained, "a limited exception to juvenile court jurisdiction, is rationally based on the age of the offender and the threat posed by the offense to the victim and the community because of its violent nature and frequency of commission." *People v. J.S.*, 103 Ill. 2d 395, 402-05 (1984). And, as with the Eighth Amendment and proportional penalty arguments above, we have held on numerous occasions that these statutes can be applied constitutionally, so they are not facially unconstitutional.

¶ 33 Defendant also argues that depriving juveniles of the opportunity to be heard before being treated as adults violates their procedural due process rights. Defendant points to statements from *Miller* in which the Supreme Court states that the courts should not ignore the distinction between juveniles and adults. See, e.g., *Miller*, 132 S. Ct. at 2466. But none of the Supreme Court holdings defendant relies upon are premised on procedural due process concerns. The Illinois Supreme Court and this court have consistently held that the automatic transfer statute does not violate the right to either procedural or substantive due process. *People v. J.S.*, 103 Ill. 2d at 402-05; *People v. Salas*, 2011 IL App (1st) 091880, ¶ 75-76, 78-79.

¶ 34 Effective January 1, 2016, the Illinois Criminal Code has new provisions that sentencing courts must consider when sentencing juvenile offenders. See 730 ILCS 5/5-4.5-105 (eff. Jan. 1, 2016). Defendant maintains that because his appeal was pending at the time that the 2016 amendment became effective, he is entitled to retroactive application of the law and, therefore, a new sentencing hearing where the court can consider the factors set forth in the statutory amendment.

¶ 35 On the occasions that this court has had the opportunity to consider a defendant's argument that the amendment should apply retroactively, we have consistently rejected it. *See, e.g.*, *People v. Jackson*, 2016 IL App (1st) 141448, ¶¶ 28-31; *People v. Hunter*, 2016 IL App (1st) 141904, ¶¶ 41-46; *People v. Wilson*, 2016 IL App (1st) 141500, ¶ 16. However, we do note that our Supreme Court accepted petitions for leave to appeal in some cases where the issue exists and the cases remain pending, such as in *Hunter* and *Wilson* which the Court consolidated for appeal. See 65 N.E. 3d 844 (Table) (Ill. Nov. 23, 2016).

¶ 36 The amendment at issue was passed on May 31, 2015, but it did not become effective until January 1, 2016. Defendant argues that the delayed implementation of the law is of no consequence because, by default, bills passed prior to June 1 of a calendar year become effective January 1 of the following year (citing 5 ILCS 75/1). But the General Assembly could have made the amendment effective immediately. Instead, it deferred to the default effective date, letting seven months pass before the law became effective. Knowing the widespread ramifications of the amendment and the significant developments of juvenile justice legislation and jurisprudence in the last few years, the General Assembly could have expressly stated that the law had retroactive application or that it should be effective immediately. Another thing the General Assembly could

have done would be to detail the class of persons to whom the amendment applies, such as those persons with appeals pending. And looking at the language of the amendment, it appears that the General Assembly did select the persons that were entitled to the benefit of the amendment—those who have sentencing hearings after the amendment became effective.

> "*On or after the effective date of this amendatory Act* of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, *at the sentencing hearing* *** shall consider the following additional factors in mitigation in determining the appropriate sentence [.]" (Emphases added.) Pub. Act 99–69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5–4.5–105).

Because the amendment explicitly says that additional sentencing factors must be considered from the effective date forward the courts have been given guidance that the new, additional mitigating factors must be considered in prospective sentencing hearings—those conducted "on or after the effective date" of the amendment.

¶ 37 In order to determine whether a statute is to be given prospective or retroactive application, we must look to the intent of the legislature. *People v. J.S.*, 103 Ill. 2d 395, 410 (1984). It is a well-established rule that a statute will be given prospective application unless there is a clear expression of legislative intent that it is to be retroactively applied. *Id.* Here, contrary to a clear expression that retroactive application is appropriate, we have a clear expression that the amendment is to apply beginning "on or after the effective date." The language of the statute is the best indication of legislative intent, and we are to give that language its plain and ordinary

meaning. *In re E.B.*, 231 Ill. 2d 459, 466 (2008). The amendment's language itself strongly evidences the General Assembly's intent that the law apply prospectively. Because defendant was sentenced in 2014 and the amendment did not become effective until 2016, he is not entitled to a new sentencing hearing based on the amendment.

¶ 38 Defendant argues that a 14 year sentence for aggravated battery with a firearm is excessive in this case. Defendant argues that there was significant evidence introduced in mitigation and that the only factor cited in aggravation was deterrence, which he explains has little functional purpose when it comes to juveniles. Defendant was convicted of a Class X felony with a range of sentencing anywhere from 6 to 30 years. 730 ILCS 5/5-4.5-25 (West 2012).

¶ 39 A trial court's sentencing decision is afforded great deference, and a reviewing court will not disturb a sentence within statutory limits unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-210 (2000). A sentence that falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007).

¶ 40 Defendant points to his youth at the time of the offense as the predominant mitigating factor. However, defendant also contends that being raised by a single mother in an impoverished and gang-infested neighborhood is mitigating. Also relevant is the lack of any aggravating criminal history, especially the lack of any violence. Defendant has a son that he was supporting and he was working at a car dealership and as a DJ. Defendant also submitted letters from family and friends who characterized him as kind and generous, and defendant apologized to the victim and the victim's family for his conduct and to his own family for his absence resulting from his conduct.

¶ 41 In addition, defendant points out that the sentence is disproportionate to his own rehabilitative potential. The Supreme Court has observed that the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence. *Roper v. Simmons*, 543 U.S. 551, 571 (2005). "Because juveniles' lack of maturity and underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions, they are less likely to take a possible punishment into consideration when making decisions (internal quotation marks and citations omitted). *Graham v. Florida*, 560 U.S. 48, 72 (2010). Nonetheless, as defendant concedes, deterrence is a proper factor for the sentencing judge to consider. 730 ILCS 5/5-3.2(a)(7) (West 2012).

¶ 42 On the other side of the ledger, there was evidence that defendant is a gang member. While driving through rival gang territory, defendant retrieved a weapon that he already had stored in the backseat of his car and began firing into a group of people. There was testimony that defendant unloaded the entire clip of ammunition, and several shell casings were found on the street and in the vehicle that were discharged from defendant's weapon. Society does have an interest in this type of conduct being deterred through the legal system. Although the shots fired by defendant only resulted in one person being hit, the gravity of defendant's conduct warranted a serious sentence. See *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) (the seriousness of the offense or the need to protect the public may outweigh mitigating factors and the goal of rehabilitation).

¶ 43 We are to presume that the trial judge considered all appropriate aggravating and mitigating factors unless there is some indication to the contrary. *People v. Chirchirillo*, 393 Ill. App. 3d 916, 927 (2009). Defendant here essentially argues that the trial court improperly weighed the aggravating and mitigating evidence and asks that we consider it anew. But that is not our role

on appeal. *People v. Higgins*, 2016 IL App (3d) 140112, ¶ 31. Instead, the trial court's decision is entitled to great deference and will not be overturned even if we may have balanced the factors differently. *People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004). A sentencing decision is not subject to reversal unless it is so unreasonable that no reasonable person would agree with it. *Id.* That is not the case here.

¶ 44 III. Fines and Fees

¶ 45 Defendant argues that the court should: (1) vacate the $20 probable cause hearing fee; (2) vacate the $5 court system fee; and (3) subtract his accumulated pre-sentence credits from the remaining fines and fees assessed.

¶ 46 The State concedes that the probable cause hearing fee and the court system fee should be vacated, and we agree. The State also concedes that defendant is entitled to a credit for the $15 state police operations fee and the $50 court system fee, and we agree.

¶ 47 However, the State argues that defendant is not entitled to credit for the probation and court services fee, the felony complaint file fee, or the public defender and state's attorney's fees. Defendant argues that these "fees" are really fines and therefore he is entitled to offset them with pre-sentence credits. We agree with the State that the contested charges are properly characterized as fees rather than fines so we uphold the assessments.

¶ 48 CONCLUSION

¶ 49 Based on the foregoing, we affirm.

¶ 50 The clerk of the circuit court of Cook County is directed to correct the mittimus to vacate the probable cause hearing fee and the court system fee. Defendant is entitled to pre-sentence credit to offset the state police operations fee and the other court system fee. The remaining fees

stand.

¶ 51 Affirmed as modified.